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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,997	09/09/2003	Charles Ray Jones		2283

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EXAMINER

MCCORMICK, GABRIELLE A

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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04/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,997

Applicant(s)

JONES, CHARLES RAY

Examiner

Gabrielle McCormick

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on March 8, 2009.
2. Claims 1-3 have been amended.
3. Claims 4-8 have been added.
4. Claims 1-8 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 8, 2009 has been entered.

Previous Objection to the Specification

6. The title of the invention is entered.

Previous Claim Rejections - 35 USC § 101

7. The Examiner thanks the Applicant for the amendment to overcome the previous rejection. The rejection is withdrawn.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. **Claims 1-6 and 8** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
10. Applicant has amended the claims 1 and 4 to incorporate the following limitation: *"said administrative members query the selected management members regarding said report"* and *"querying selected management members regarding said report by said administrative members requires addressing of said issues and said concerns in said report by said selected management members"*.
11. Paragraph [0041] discloses "submittals from members are automatically distributed or otherwise made available at least to the senior manager, and may be administratively provided as determined by key words to other key managers, to functional area managers, to regulators, and to interested members of the public."
12. This disclosure does not provide support for administrative members querying management to require addressing of issues and concerns.
13. Claims 2 and 8 elements "means for automated peer-review and concurrence for increasing issue and concern validity".
14. Paragraph [0026] discloses, "The system for each organization must be uniquely tailored software and hardware that collects and provides to senior management and other stakeholders (such as regulatory or oversight entities) the periodic or special reports expected from lower level workers and managers in the organization." There is no recitation of specific structure, including

the specific algorithm or algorithms used to provide the functionality required by claims 2 and 8. Therefore, the disclosure lacks adequate support for the claimed subject matter.

15. Claims 2 and 8 recite "peer identification data fields *within the report* comprising names or employee numbers...". Applicant has stated that the originally filed claim 2 provides support for these claims, however, the original claim 2 states "peer identification data fields such as names or employee numbers" and does not disclose where these fields are presented. Therefore, there is no support for these fields to be located within the report.
16. Claim 2 further recites an "automated means comprising software programs to provide online collaboration, including an interactive peer-review status prompting for the originator, the senior manager, database managers, regulators, and public, in databases and reports as separate means for screening for said interactive peer-review status." Applicant has stated that the originally filed claim 2 provides support for these claims, however, the original claim 2 states, "inclusion in databases and reports as separate means for screening for peer-review status." And "automated means such as database searches using key words and software programs (normally server scripts or direct inputs of keywords by users) to provide online collaboration, including interactive peer-review status prompting for the originator or for others such as the senior managers, the database manager, the regulator, or the public."
17. Applicant has apparently combined these two separate means into one, however, there is no support in the specification or in original claim 2 as to how these two are combinable into a single automated means.
18. Claim 6 recites consolidating reports with one or more *identical* reports.
19. Paragraphs [0029-0030] states that reports can be consolidated within a parent organization or industry or by issues and concerns, but does not states that the consolidated reports are *identical*. An identical report would be understood to be an exact duplicate.

20. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

21. **Claims 2, 3 and 8** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
22. Claims 2 and 8 elements "means for automated peer-review and concurrence for increasing issue and concern validity".
23. Paragraph [0026] discloses, "The system for each organization must be uniquely tailored software and hardware that collects and provides to senior management and other stakeholders (such as regulatory or oversight entities) the periodic or special reports expected from lower level workers and managers in the organization." There is no recitation of specific structure, including the specific algorithm or algorithms used to provide the functionality required by claims 2 and 8.
24. The Federal Circuit held, "Here...the patent does not disclose the required algorithm or algorithms, and a person of ordinary skill in the art would not recognize the patent as disclosing any algorithm at all. Accordingly, the means-plus-function limitations of claim 1 lacked sufficient disclosure of structure under 35 U.S.C. 112 P6 and were therefore indefinite under 35 U.S.C. 112 P 2." (*Aristocrat Technologies v. International Game Technology*, 86 USPQ2d 1235 (Fed. Cir. 2008)).
25. Applicant is required to:
- (a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or
 - (b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).
26. If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in

the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

27. Claim 2 further recites an "automated means comprising software programs to provide online collaboration, including an interactive peer-review status prompting for the originator, the senior manager, database managers, regulators, and public, in databases and reports as separate means for screening for said interactive peer-review status." This limitation is unclear as to how the peer-review status prompting takes place.
28. Claim 3 contains the terms, "the final recipients" and "the originators". These terms lack proper antecedent basis.

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. **Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferraro (US Pub. No. 2003/0088645) in view of Carlson et al. (US Pub. No. 2003/0135378, hereinafter referred to as "Carlson").

31. **Claims 1, 4, 5 and 7:** Ferraro discloses an automated form (P[0043]: form 59) for anonymous collection of issues and concerns (P[0022]; P[0037]: suggestions are an example of routine information; incidents and accidents are examples of critical information) using a web site (P[0038]). Reports are stored in a relational database that allows creation of custom reports. (P[0045]). Information is categorized (i.e., classified) (P[0031]). The originator selects and transmits reports to people of their choosing (thus filtering is disabled) (P[0036]). An administrator also receives the report to conduct statistical analysis. (P[0040]).
32. Ferraro does not explicitly disclose sending the report to *management* or administrative members querying management such that issues and concerns are addressed and a reply is received.
33. Carlson, however, also discloses an automated incident reporting system where the report is classified (P[0011]). Carlson discloses that the report is sent to a supervisory authority that assigns corrective action to "designated personnel, such as division managers" (P[0012]). Therefore, Carlson's supervisory authority includes senior level management that assigns corrective action to a middle level manager. The supervisory authority is also understood to comprise administrative members is that this authority assigns corrective actions and reviews the corrective action to determine whether to close out the report. (P[0015]). The assigned personnel (i.e., the middle managers) complete the corrective action and record it in the database. (P[0013] and Fig. 7).
34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included sending the report to management and addressing issues and concerns in a reply by management, as disclosed by Carlson, in the system disclosed by Ferraro, for the motivation of providing a method of allowing users to provide follow up to an incident (Ferraro; P[0032]) in a way that uniformly tracks incidents that leads to prevention of similar incidents across a company. (Carlson; P[0009]).
35. **Claims 2 and 8:** Ferraro discloses that a "witness" can augment previous reports (P[0024], but does not disclose *peer identification data fields within the report comprising names or employee numbers of a peer of said member.*

35. Carlson provides *peer-review and concurrence* in para. [0035] in which "production personnel involved in the incident..." are part of the reporting process. Through the inclusion of personnel within the incident report (i.e., peer identification data fields), a means for peer-review and concurrence is provided. Fig. 5 discloses the form with a data field for an employee name ("Hazmat Responders"). Further, the corrective action process where the corrective actions are assigned to designated personnel (P[0036]) further discloses a means of peer-review and concurrence, as it is inherent in the process of corrective action that the incident is both reviewed and concurrence is reached as to the corrective action to be taken. The incident report includes "the personnel", therefore all involved are named and no one "whistleblower" is identified that may result in individual reprisals. In P[0012], Carlson discloses that the supervisory authority assigns corrective actions to "division managers" (i.e., a middle manager) who in turn may assign specific tasks to additional designated personnel (i.e., a *peer*). The corrective actions and designated personnel are recorded in the incident report and are automatically notified to access and review the report (P[0013]). Thus, disclosing an automated peer-review means.
36. Note: the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The phrase, "for increasing issue and concern validity and providing a means of reducing or avoiding reprisals against individual whistleblowers" is construed to provide the intended use of the means of peer-review and concurrence. Carlson provides both designation of involved personnel (and therefore the means for peer-review), as well as a corrective action system which designates personnel assigned to review the incident report (i.e., provide peer-review and concurrence) as part of completing the corrective action (P[0013]). This results in a peer-review means that is therefore capable of increasing issue and concern validity and providing a means of reducing or avoiding reprisals against individual whistleblowers.
37. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included peer review using identification of an employee in a data field, as disclosed by

Carlson, in the system of Ferraro for the motivation of ensuring a uniform implementation of the system (Carlson; P[0009]). It is obvious to conduct an investigation, as required in the corrective action process and it is therefore obvious to identify peers or personnel involved in the incident to assist in determining root cause of the incident.

38. **Claim 3:** Ferraro discloses that the administrator conducts statistical analysis, creates charts and prints custom reports (P[0040]) but does not disclose middle management presenting a summary to final recipients.
39. Carlson, however, discloses middle managers assigned corrective action responsibility by a supervisory authority (P[0012]). The corrective actions and completion are recorded via a user interface and stored in a database. The supervisory authority (i.e. a final recipient) reviews the incident report to determine adequacy of the corrective action (P[0019]). Thus, the final recipient reviews a summary that combines inputs from the originators and middle management's addressing of the concerns and issues.
40. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included a summary report to final recipients that includes middle management actions, as disclosed by Carlson, in the system of Ferraro for the motivation of providing a review of the incident and actions taken by an authority that is able to determine the adequacy of the actions such that similar incidents will be prevented.
41. **Claim 6:** Ferraro discloses correlating previous reports (P[0024]) and the administrator using reports to conduct statistical analysis and create charts and custom reports. (P[0040]).

Response to Arguments

42. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.
43. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a specific definition of

"routine information", that peers are defined as "co-workers") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

44. Claims 2 and 8 recite the limitation of a peer-review means. As Carlson provides the identification of involved personnel and a corrective action system in which incidents are reviewed by fellow employees (i.e., peers), a peer-review means is disclosed. In P[0012], Carlson discloses that the supervisory authority assigns corrective actions to "division managers" (i.e., a middle manager) who in turn may assign specific tasks to additional designated personnel (i.e., a *peer*). The corrective actions and designated personnel are recorded in the incident report and are automatically notified to access and review the report (P[0013]). Thus, disclosing an automated peer-review means.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./
Examiner, Art Unit 3629

/JOHN G WEISS/
Supervisory Patent Examiner, Art Unit 3629